DOWANS

PRESS RELEASE

Good afternoon, ladies and gentlemen of the Press. Thank you for your attendance at short notice to this important briefing.

My full name is Brigadier General (Rtd) Sulaiman Mohammed Yahya Al Adawi. I am here to put the record straight. I am the majority owner of Dowans Holdings SA and therefore its subsidiary in Tanzania, Dowans Tanzania Limited. I will address my two companies collectively as 'Dowans'.

My visit to Tanzania has two main objectives:

- to address the mis-information and mis-representation targeted at Dowans, and
- to understand whether there can be an amicable solution to the current situation

I have prepared a statement which I am now going to distribute to you. Then my team will be available to take some questions.

Firstly I would like to introduce my team briefly. On my right is Stanley Munai who is the Finance Director of Dowans Tanzania Limited. On my left is John Miles who is a prominent international lawyer and has been acting for Dowans since the start of our dispute with TANESCO.

Introduction

Tanzania markets itself as a respectful, law-abiding and attractive destination for foreign direct investment. The experience of my company, Dowans, in Tanzania has been the complete contradiction to that assertion and has been nothing more than a nightmare. I put my faith in your country and answered your call to invest at the time of your crisis. All you have done since my investment is harass me, today you continue to harass me: this is simply not fair.

I am private man and I have been private in all my business dealings throughout my life. Your treatment has compelled me to do what I have never had to do before: to come forward publically with my anger at the injustice that you have inflicted on me.

TANESCO gave assurances and made contractual commitments. TANESCO then breached these assurances and contractual commitments on the false premise that TANESCO had breached its own internal procurement processes. This is unheard of in the world of international commerce and will cause your country an enormous damage.

My background

My background is in the Sultanate of Oman, where Tanzania used to be held in high esteem. Starting from a small beginning in 1977, I have grown the Services & Trade LLC group to a multi-national presence in the Middle East, Africa and the Indian sub-continent. My companies now turn over more than US$ 200 million and employ over 25,000 personnel. The Services & Trade LLC group is one of the pre-eminent businesses in the Middle East.

Ownership

There has been much un-warranted speculation about who owns Dowans Holdings SA. I am here to set the record straight.

Dowans is wholly foreign owned by myself.

Considering Dowans' proper conduct of the Power Off-take Agreement (hereinafter referred to as the 'POA'), Dowans and its principals are highly dissatisfied by the way Dowans has been treated. Further considering the magnitude of Dowans' investment at over US$ 100M, allegations that Dowans is anything other than a principled serious investor are both misleading and malicious.

Dowans' background

Dowans Holdings SA was incorporated in late 2005. At that time, I had been following the development of telecommunication infrastructure in East Africa with interest. I intended that Dowans would become an investor into Tanzania's emerging telecom sector by providing a high quality state-of-the-art fibre optic network throughout the country.

As I have already explained, I am based in Muscat in Oman. I needed someone to represent and promote my planned fibre optic project on a regular basis in Tanzania. Hence I asked my friend of many years, Mr Rostam Aziz, to assist in setting up the project. In order that Mr Aziz had sufficient authority to represent my company, in 2005, I granted Mr Aziz a power of attorney.

Subsequently it transpired that the Chinese government lent the Tanzania government funds to enable a government-backed fibre optic network to be installed, negating the fibre-optic opportunity my company had seen in Tanzania. So I turned my attention to infrastructure investments elsewhere, chiefly in Asia.

The 2006 power crisis

In 2006, Tanzania was suffering from an extreme drought and TANESCO's largely hydro-dependent generating capacity was dramatically reduced. The country was suffering from crippling power cuts and the economy was in crisis. RDEVCO LLC (which I will refer to as 'Richmond') appeared not to have made much progress in implementing its 113MW project.

In September 2006, Mr Rostam Aziz contacted me to explain the power crisis and sought to persuade me to assist. It seemed to me at that time that Tanzania needed an investor who had access to resources and who could mobilise fast.

You will remember the TANESCO appeal in the media in 2006 for anyone with the ability to generate 1MW and above to contact TANESCO to assist in generating emergency power. The national electricity grid was collapsing.

As you know, eventually Dowans reached an agreement with Richmond that, upon receipt of TANESCO's consent to the assignment, Dowans would take over Richmond's Power Off-take Agreement with TANESCO.

What I find particularly shocking today is that we believed at that time that Dowans would be well received by TANESCO, Government and the Public as the hero of the hour stepping in when all else was failing.

Dowans then paid out US$ 109M to purchase the turbines, transformers, balance of plant equipment, engineers and installation experts necessary to undertake the project from hard-earned cash resources from my group of companies. Later in 2007

I personally guaranteed a further US$ 20M finance line for Dowans' working capital.

Some ill-informed people have criticised Dowans calling my company a shell company. I challenge those people to show me another shell company which owns a US$ 109M power plant! Any serious businessman understands that the use of a 'special purpose vehicle' for such projects is standard international commercial practice. Among other reasons for using special purpose vehicles are: ring fencing assets & liabilities – protecting them from contagion and for tax purposes.

While in the process setting up a Tanzanian company to oversee the operation, I needed people and facilities on the ground that were intricately conversant with the Tanzanian business environment, procedures and practices. Naturally I called on my friend Rostam Aziz to assist me. In the language of business this is known as a "hospitality arrangement". I relied initially on an employee of Caspian Limited who immediately thereafter handed over to personnel recruited for the project.

Assignment of the Power Off-take Agreement

On 21st December 2006, TANESCO consented to the assignment of the Richmond Power Off-take Agreement and Dowans was contracted to supply the National Grid with 113MW of electrical power. Dowans installed and fully commissioned a state-of-the-art 113MW Power Plant Facility at a cost in excess of USD 100 million. From January 2007 until 31st July 2008, Dowans generated and supplied much needed power to the National Grid.

Seeing that the ICC Award seems now to be [a public document] ... I will take this opportunity to read to you what the ICC Tribunal thought of Dowans' performance. I refer to Paragraph 248 of the ICC Award and I quote:

'It is apparent ... to put it at its lowest, (Dowans) lost no time in progressing the project. Indeed, the (ICC) Tribunal finds it nothing less than remarkable, and a cause for congratulation, that only a month or so after Dowans had taken over the project, electricity was being supplied to the national grid ...'

'(Dowans)' achievement in this respect was all the more impressive given that ... Dar es Salaam was flooded by an immense rainfall, causing significant suffering. Site A at Ubungo was completely water-logged as a result of flooding. ...'

The Power Off-take Agreement and Dowans' performance

The key conclusion of the Arbitration Tribunal in the ICC award was the confirmation that the Power Off-take Agreement was valid and binding on the parties. Another independent Arbitral Tribunal (TANESCO vs. RDEVCO) also arrived at the same crucial finding.

Dowans' contract with TANESCO was negotiated at arm's length. The cost of Dowans' electrical power was fair: **the capacity price per kW was the lowest of any independent power contract in Tanzania** as well as in East and Central Africa. TANESCO has always accepted that Dowans' performance throughout the contract complied to the letter of that contract.

I further quote from the ICC Award Paragraph 529:

'... DTL had fully performed its obligations under the [Power Off-take Agreement] in a manner which was (as [TANESCO] accepts) above criticism. ....'

This validates the quality and efficiency of the equipment that Dowans acquired directly from vendors either new ex-factory and/or under warranty. Dowans can boldly state that, by international standards, it installed the best equipment available.

To conclude my comments on Dowans' exemplary performance, I further quote from the ICC Award Paragraph 341:

'... the [Dowans] plant had been a reliable efficient plant providing TANESCO with much needed power to the national grid'.

I am informed, and indeed gratified, that His Excellency, the President Jakaya Kikwete recently publicly acknowledged that the Dowans power generation facility greatly assisted this nation in alleviating the persistent power problem.

Parliamentary Select Committee

It is not my intention to go into the details of what transpired in parliament – I leave that to others. Dowans is a legitimate, legally constituted company, contracted on a commercial basis at the lowest thermal price to TANESCO, to bail out the Tanzanian nation following a crippling power outage in 2006.

I further quote from ICC Award Paragraph 529:

'As subsequent events had demonstrated, DHSA / DTL was an organization of standing and substance in that it had taken on a high-profile and large-scale project and progressed that project entirely satisfactorily, employing its own resources in terms of finance, equipment and manpower, until [TANESCO], for its own reasons (which had nothing to do with Dowans' performance), sought to bring the project to an end.'

Dowans is proud of its conduct and performance in Tanzania.

Payments

Despite this exemplary performance, TANESCO's payments for power supplied were not forthcoming and where made, significantly delayed. I quote again from the ICC Award Paragraph 315 wherein the Tribunal was shocked that:

'on 25 March 2008, ... payments totalling US$ 25M ... remained outstanding ... and delays in payment had resulted in Dowans' operations being severely constrained.'

Dispute

On 30 June 2008, TANESCO, without notice or discussion, directed Dowans to decommission its plant. This directive was made without clear reason and without any criticism of Dowans' conduct or performance. Dowans took appropriate legal advice and, as provided under the contract, lodged its request for Arbitration with the International Chamber of Commerce in Paris for breach of contract by TANESCO.

Tender and injunction

As directed by TANESCO in June 2008, Dowans commenced the process of decommissioning the plant. Due to the abruptness of the decommissioning directive, DTL did not have a suitable immediate requirement for deploying the Power Plant within the East African region. For that reason Dowans decided to advertise the Power plant for sale. As expected, the public advertisement of the offer for sale of the Power Plant attracted great interest from major players in the international power market, due to the superior technical specification and low running hours of the Power Plant.

Subsequently, in contradiction of the directive to decommission from site, TANESCO, again without notice to Dowans, obtained an ex-parte restraining order, effectively preventing Dowans from proceeding with the decommissioning of its plant. That

action inevitably increased the damages that Dowans suffered. The Court order, which was made solely on the evidence of TANESCO, was challenged in the appropriate way.

ICC Arbitration

Most commercial contracts between Government Ministries and Parastatals, such as TANESCO, and international investors provide that disputes arising out of contracts shall be resolved through an international arbitration tribunal. This is established business practice that has developed over the last century of international commerce. The International Court of Arbitration of the International Chamber of Commerce is one of the oldest and most recognized arbitration institutions in the world.

Under the ICC rules, ICC awards are deemed to be final and binding. The reasoning behind this principle is that it ensures final commercial certainty for the parties to any dispute. In addition to this, both TANESCO and Dowans specifically agreed by contract to waive any possible right of appeal. The ICC award is final and binding on Dowans and TANESCO.

ICC Award

The Arbitration Tribunal of the International Chamber of Commerce ('ICC') International Court of Arbitration delivered its award dealing with the issues between TANESCO and Dowans dated 15th November 2010. You should note that Dowans was not awarded the full amount that it claimed in the Arbitration. Dowans is bound by the arbitration clause in the agreement with TANESCO and thus Dowans concedes that, as a consequence of the ICC award, the previously outstanding disputes with TANESCO were then resolved.

How can anyone suggest that compensation based on a 4.99 c price is contrary to Public interest when all the other IPPs costs are significantly in excess of this amount?

The Government states that its public policy is to encourage private investment. I am deeply concerned for the future of foreign direct investment in Tanzania should Tanzania seek to ignore or reject a binding ICC Award. We are not only looking at future contracts here: by rejecting an ICC Award, Tanzania is in effect ripping up every international investment agreement in existence in Tanzania today.

Payment of the Award

Dowans now expects TANESCO to honour its obligations under the award without delay.

You should note that US$ 24M of the award is for power supplied to TANESCO prior to termination. TANESCO has supplied this power to its customers and been paid by its customers. TANESCO and Government have affirmed on several occasions that service rendered by Dowans prior to termination is not in dispute. TANESCO and the Ministry of Energy and Minerals approved and certified the relevant invoices and passed them to the Ministry of Finance for payment in 2008.

Considering the above, this is money due to Dowans.

The future

Upon receipt of the Award, Dowans wrote to TANESCO and Government seeking to engage in discussion and consideration of available options. Dowans is yet to receive a response.

My assurance is that Dowans, if approached for such discussion, will assist, where possible to ease the burden of the Award on TANESCO. With good intentions and in the spirit of amicable resolution, it is my sincere hope that TANESCO, the Government and the people of the United Republic of Tanzania will listen to us so that we can together see how we can work to alleviate current electricity crisis.

Conclusions

Subsequent to the award, key facts relating to the Power Off-take Agreement and the subsequent dispute between TANESCO and Dowans continue to be mis-reported in the Tanzania media.

Considering Dowans' proper conduct of the Power Off-take Agreement, I am highly dissatisfied by the way Dowans has been treated. Further considering the magnitude of our investment, allegations that Dowans is anything other than a principled serious investor are both misleading and malicious.

I am making this statement in order to correct the high level of inaccurate reporting and commentary that has occurred in recent weeks. As matters between TANESCO and Dowans are now resolved by the ICC award, we expect that Dowans be accurately and respectfully reported in the national media. Any distortion of mis-information shall be dealt through legal channels.

Signed

Brigadier General (Rtd) Sulaiman Mohammed Yahya Al Adawi

Dowans Holdings SA

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